

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**





77-6100

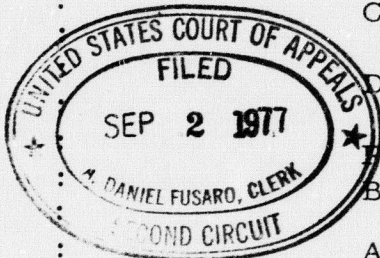
THE UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

NORMAN F. DACEY  
Plaintiff-Appellant

v.

PETER H. DORSEY  
Defendant



CIVIL APPEAL

Docket No. 77-6100

PLAINTIFF APPELLANT'S  
BRIEF AND INDEX

August 30, 1977

SEP 1 1977

**BRIEF + APPENDIX** SYNOPSIS

This action arises from the failure of the Defendant, as the appropriate Federal official [he has since been replaced], to initiate and carry out such measures as appeared necessary and appropriate to assure the preservation of the Plaintiff's constitutional rights in an action then pending in the Connecticut civil courts. The Plaintiff had earlier been awarded damages in an action for libel brought against the Connecticut Bar Association. The Bar Association appealed the award to the Supreme Court of Connecticut, a bench consisting of five of the Association's own members. The justices, barred specifically by Connecticut statute and by centuries of legal precedent add tradition from sitting in judgment on a case in which they themselves, as members of the Association, were defendants and therefore liable to contribute to the damages and costs in the action, nevertheless rejected (on November 12, 1975) the Plaintiff's motion that they recuse themselves and refer the case to the United States Supreme Court for review. At the hearing on the appeal (on December 2, 1976), the Plaintiff renewed his plea to the justices to observe the law and the Canons of Judicial Ethics. The Court listened, and then ordered oral arguments on the merits of the case to proceed forthwith, at the conclusion of which the justices reserved decision. On April 6, 1976, they announced that they were reversing the lower court and remanding the case for retrial.

On or about March 1, 1976 -- that is, between the date when the five justices announced their denial of the Plaintiff's initial motion that they recuse themselves, and the date when they announced their decision reversing the lower court and remanding the case for retrial -- the Plaintiff filed with the Defendant a formal complaint



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charging that the justices appeared to be conspiring to deny him his constitutional right to due process -- that is, to a fair trial before an impartial tribunal. The "conspiracy" consisted of an agreement entered into by the justices with the Board of Governors of the Connecticut Bar Association under which the latter passed a "special resolution" granting the justices a remission of their dues equivalent to any amount they were required to contribute to damages awarded the Plaintiff in his libel action, the whole being a transparent attempt to evade the letter and spirit of the Connecticut statute debarring them from sitting on the appeal. The Plaintiff drew the Defendant's attention to Title 42 Section 1983 of the United States Code, which provides as follows:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage...subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Title 18 Section 242 of the United States Code provides a criminal analogue to the above Title 42 Section 1983. Thus, the Plaintiff pointed out to the Defendant, the actions of the justices constituted a criminal violation of the United States Code.

Next, the Plaintiff drew the Defendant's attention to Title 42 Section 1984 of the United States Code, which provides as follows:

"In any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators (emphasis added)."

Finally, the Plaintiff drew the Defendant's attention to Title 42, Section 1986 of the United States Code, which provides as follows:

"Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceeding section are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representative, for all damages caused by such wrongful act which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action."

In his capacity as United States Attorney, the Defendant was the only Federal official in Connecticut "having power to prevent or aid in preventing" the conspiracy



cited to him by the Plaintiff. Notwithstanding his full knowledge of the imminence of the violation, however, he took no steps to preserve the Plaintiff from the injury likely to be caused by such violation, citing as a reason for such failure on his part the fact that he was a fellow-member of the five offending justices in the Connecticut Bar Association, and as such was one of a class of defendants in the Plaintiff's libel suit against the Association.

After the offending justices issued their decision on April 6, 1976, reversing the jury in the libel action, the Plaintiff filed this action charging that the Defendant had knowingly, wilfully and intentionally violated his oath of office in that he had failed and neglected to perform the duty specifically imposed upon him by Section 1986, and thereby had, in effect, joined in the conspiracy of the five justice members of the Connecticut Bar Association to deprive the Plaintiff of his civil right to due process, his part in the conspiracy being the protection of the justices from the consequences of their criminal violation of the law. By his actions, the Defendant thus became a violator of Sections 1983, 1985 and 1986 of the United States Code. By his refusal to initiate criminal action against the five offending justices for their violation of Title 18 Section 242, the Defendant himself violated the United States Criminal Code.

The District Court declined to reach the merits of the Plaintiff's action, dismissing it out of hand on the grounds that as a prosecutor the Defendant enjoyed absolute immunity from an action for damages. It also ignored completely the Plaintiff's prayer for injunctive relief ("such other and further relief as the Court deems fair and equitable.")

\* \* \*

The issues raised by this appeal are as follows:

1. IS THERE SUCH A THING AS "PROSECUTORIAL IMMUNITY"?
2. IF THERE IS, DID IT APPLY TO THE ACTIONS OF THE DEFENDANT CARRIED OUT IN DELIBERATE VIOLATION OF FEDERAL LAW?
3. DID THE DISTRICT COURT ERR IN IGNORING THE FACT THAT COURTS HAVE HELD UNANIMOUSLY THAT THERE IS NO SUCH THING AS IMMUNITY FROM A CLAIM FOR INJUNCTIVE RELIEF?

\* \* \*

1. IS THERE SUCH A THING AS "PROSECUTORIAL IMMUNITY"?
- (A) Prosecutorial immunity was outlawed by the Civil Rights Laws.

The doctrine of "prosecutorial immunity" is the sibling of another hoary, old legal fraud, the doctrine of "judicial immunity." Both are judge-made. Nowhere in the Constitution or Bill of Rights, or in the U.S. Civil or Criminal Codes, is there anything which may remotely be construed as sanctioning either doctrine.



The idea that the King's judges and prosecutors enjoy some special kind of immunity is rooted in medieval times when it was held that the King could do no wrong, and that judges and other high court officials, his delegates for dispensing justice "ought not to be drawn into question for any supposed corruption [for this] tends to the slander of the justice of the King." Floyd & Barker, 12 Co Rep 23, 25, 77 Eng Rep 1305 (Star Chamber 1607). We no longer have a King, but that does not mean that judges and other high court officials are not now answerable to anyone. The people are now sovereign and it is to them that judges and prosecutors are now answerable. Under the common law, a man is answerable to a jury of his peers, which simply means that allegedly-improper acts of any individual, including a prosecutor, may be examined by a jury in a courtroom. But what would be the point of such examination if the jury were proscribed from imposing sanctions upon a prosecutor whom it determined had wronged others by abuse of his prosecutorial authority? In this respect, the law is clear:

"A prosecutor who, while acting within the scope of his duties in initiating and prosecuting a case, wilfully deprives the accused of his constitutional rights is subject to criminal punishment under 18 USCS 242, which makes it a crime for a person, acting under color of law, to deprive another of any right protected by the Constitution or laws of the United States, and is subject to professional discipline and disbarment." (U.S. Supreme Court Digest, Lawyers' Edition, Civil Rights, Section 12.5)

"The Federal Courts have repeatedly held that criminal statutes enacted for the protection of a particular class from particular harm endow the intended beneficiaries thereof with a civil cause of action against their violation. (See e.g. J.E. Case Co. v. Borak 377 U.W. 426 (1964); Reitmeister v. Reitmeister, 162 F 2d 691 (2nd Circ.; Sullivan v. Little Hunting Park, 396 U.S. 229 (1969); Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1969))

"Immunity of State Judges Under the Federal Civil Rights Act: Pierson v. Ray Reconsidered," (Northwestern University Law Review, 65:615, 1970)

Magna Carta, in 1215, was essentially a revolt against the King and the brand of justice dispensed by his judges and prosecutors. It ended with the King's agreement to allow men to be judged by a jury of their peers. Henceforth, said the agreement, the peers would determine what was the "law of the land" and would oversee its application. The clearest indication of the lack of immunity of the King's judges and prosecutors was to be found in Chapter 61 of Magna Carta:

"If we or our chief justiciary fail to afford redress...the commonality of the whole country shall distrain and distress us to the utmost of their power, to wit, by capture of our castles, lands and possessions and by all other possible means."



That chapter of Magna Carta is the absolute negation of any theory or doctrine that judicial or prosecutorial immunity is rooted in the common law. Magna Carta is the common law and the doctrine has no sanction there. In giving meaning to the term "due process of law," the United States Supreme Court has said:

"The words 'due process of law' are intended to convey the same meaning as the words 'by the law of the land' in Magna Carta." Murray v. Hoboken Land Co., 59 U.S. (18 How) 15L ed 372.

To the citizen of the United States, then, the guarantees of "due process" provide the assurance that he will enjoy the administration of justice literally as it is spelled out in the "law of the land" -- that is, as it is set down in black and white in the Constitution and the Bill of Rights, and in the United States Civil and Criminal Codes, all of these being laid down by the peoples' representatives in the Congress.

In the years following 1215, other kings, judges and prosecutors sought to encroach upon the rights secured to the people by Magna Carta, imposing their corruptions of the "law of the land" upon the people until the undemocratic doctrine of "special immunity" was dealt another blow -- this time by the American Declaration of Independence. In the rebellion, the officers of the King's courts were hung in effigy and many were forced to flee for their lives.

If the colonists had had available to them the Civil Rights Statutes (Title 42 Sections 1983, 1985, 1986 and 1994 of the U.S. Code) -- and there would have been no point in having such statutes if their effectiveness was to be drained away by the granting of "immunities" -- it is likely that there would have been no Revolution. If citizens oppressed then by judges and prosecutors could have readily sued such individuals and had the matter determined by a jury of their peers, there would have been no need for a revolution. As it was, the Declaration of Independence and the Constitution spelled out anew the rights of the citizenry and the twin doctrines of "judicial immunity" and "prosecutorial immunity" were once again relegated to the discard.

The proponents of the doctrines did not abandon the fight. Thomas Jefferson wrote to Noah Webster in 1790 that there were "certain rights which experience has proved particularly efficacious against wrong, and rarely obstructive of right, which yet the governing powers have ever since shown a disposition to weaken and remove," and he cited such rights as habeas corpus and trial by jury as examples of the natural rights of which defiant public officials have from time to time sought to deprive the people, precisely as this Plaintiff has been deprived repeatedly over the past decade.

As wolves which have been driven beyond the perimeter skulk awile in the shadows, gradually becoming bolder until they return to threaten again in the dooryard,



so have the years produced other aberrant legal practioners who have schemed to encroach upon the public's rights by slyly reasserting the tired old doctrine of special legal privileges and immunities.

Their impositions reached a climax following the Civil War, when the citizens of the land again rebelled and acting through their elected representatives in Washington, passed the Civil Rights Acts of 1866. Among other things, consequence of the liberation of slaves, these acts were being particularly intended to protect Negroes against the loss of constitutional rights "under color of law." Such deprivation of Negro rights generally originated with prosecutors, as well as with judges, sheriffs, deputies and bailiffs.

If judicial and prosecutorial immunity ever had been an absolute right under the common law, that right was wiped out by the language and intent of Congress when it passed the Civil Rights Acts, the forerunner of the present Title 42 USC Section 1983 which was and is intended to provide a remedy in the form of money damages to those who suffer constitutional deprivations under the "color" of law, custom or usage.

Examining the legislative record of the Civil Rights Acts, we note that among the proponents of the bill was Senator Trumbull, who said:

"[The doctrine of immunity] places officials above the law.  
It is the very doctrine out of which the rebellion was hatched."  
(Cong. Globe, 39th Cong., 1st Sess.)

Another framer, Representative Lawrence, saw the Acts as providing no refuge for court officers:

"It is better to invade the power of the States than to permit it to invade, strike down and destroy the civil rights of citizens....If an officer shall intentionally deprive a citizen of a right, knowing him to be entitled to it, then he is guilty of a willful wrong which deserves punishment (emphasis added)."  
(Ibid.)

Any contention that the people's representatives did not intend to eliminate once and for all the doctrine of official immunity is refuted by the fact that every member of the Congress who spoke on either side of the issue assumed that the words of the statute meant exactly what they said when they referred to "any person." Without exception, those members of the Congress who objected to the statute stated that they did so because it clearly imposed liability upon all the officers of a court.

Sheldon Gardner who, as head of the Civil Division of the Cook County State's Attorney's Office, was the chief of one of the largest civil divisions of any prosecutorial office in the United States, has contributed an authoritative series of articles on official immunity and the Civil Rights Acts to The Prosecutor (Vols. 10 and 11, 1975 and 1976) Following are significant excerpts from those articles:



"A citizen of the United States has a dual citizenship with an entire set of Federal rights to be protected by Federal courts even where State law and State officials are in conflict.

"The Civil Rights Acts, in attempting to protect the civil rights of 'any citizen...or other person' from deprivation by 'every person,' included judges and other officials. This, in effect, abolished the doctrine of judicial immunity for civil rights violations by judges. Under these Acts, judges were not immune to civil and criminal actions (emphasis added)."

"Title 42, Section 1983, is probably the most important of the Civil Rights Acts. At the time the original Act was passed, Congress fully intended that 'every person' did, in fact, mean every person without exception. Indeed, President Johnson, in his veto of the Act, cited the fact that the Act covered judges... as one of the reasons for his veto.... The veto was over-ridden. The words of Congressman Rainey of South Carolina are characteristic of the prevailing attitude in opposition to an express grant of judicial immunity. Mr. Rainey noted that:

'The courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity.' (Cong. Globe, 42nd Cong. 1st Sess. p. 394)

In Ex Parte Virginia, 100 U.S. 339, a case dealing with the ministerial actions of a judge,... the court indicated:

'We do not perceive how holding an office under a State and claiming to act for the State, can relieve the holder from the obligation to obey the Constitution or take away the power to punish his disobedience.'

"Thus, it was apparent to President Johnson, members of the Congress and the Supreme Court of that era that the Act contemplated no judicial or quasi-judicial immunity (emphasis added)."

"These Civil Rights Laws are here, they are constitutional and ... judgments under them are collectible (emphasis added)."

In its 1967 decision in Pierson v. Ray (386 U.S. 547, 18 L ed. 2nd 288 87 Sup. Ct 1213), a case which raised the question of the vulnerability of a judge, prosecutor and police officer to civil suits for damages for civil rights deprivation, the United States Supreme Court ruled that:

"The petitioners had the right to use the waiting room of the bus terminal, and their deliberate exercise of that right in a peaceful, orderly and inoffensive manner does not disqualify them from seeking damages under Section 1983.... The petitioners' right to recover for an invasion of their civil rights, subject to a defense of good faith and probable cause is adequately secured by Section 1983 (emphasis added)."

The petitioners "right to recover" and to "seek damages" from whom? Why, from judges or prosecutors who had not acted "in good faith or with probable cause." They could sue a prosecutor in such cases, the Pierson court held.



The Defendant here has not indicated that he intends, when the matter is tried, to offer a defense of good faith. The District Court did not examine that aspect of the matter...and in any event, it is a question of fact which it is the province of the jury to decide in the requested jury trial.

In his dissent on Pierson v. Ray, Justice Douglas expressed his disdain for the doctrine of official immunity, equating it with the claim that "the King can do no wrong." Citing the long Congressional debates attending the passage of Section 1983, and specifically the provision of the section applying it to "every person," he wrote:

"To most, 'every person' means every person, not every person except judges. . . . It would be reasonable to assume that the judiciary would have been expressly exempted from the wide sweep of the Section if Congress had intended such a result."

While the above and other cases cited herein by the Plaintiff refer particularly to judges and the doctrine of judicial immunity, the principles expressed are equally applicable to prosecutorial immunity. The argument for judicial immunity has been advanced more frequently and more vigorously than that for prosecutorial immunity. However, if the doctrine of judicial immunity is now generally discredited -- as indeed it has been -- it follows that prosecutorial immunity equally lacks validity today.

The United States Supreme Court said (in Marbury v. Madison, 1 Cranch 137, 174, 1803): "It cannot be presumed that any clause in the Constitution is intended to be without effect," while in Meyers v. The United States (272 U.S. 52, 151, 1926) it added: "The real effect should be given to all the words the Constitution uses." In other words, the Supreme Court said, laws should be interpreted to mean what they say. They should not be interpreted to mean that which they specifically fail to say.

"It cannot be assumed that the framers of the Constitution and the people who adopted it did not intend that which is the plain import of the language used. When the language of the Constitution is positive and free from all ambiguity, all courts are not at liberty, by a resort to the refinements of legal learning, to restrict its legal meaning to avoid the hardships of particular cases. We must accept the Constitution as it reads when its language is unambiguous, for it is the mandate of the sovereign power." (State v. Sutton, 63 Minn. 147, 65 N.W. 262, 30 L.R.A. 630, '56 Am. St. 459; Lindberg v. Johnson, 93 Minn. 267, 101 N.W. 74)

The Constitution is not ambiguous in setting forth the right of every citizen to due process -- that is, to a "fair trial." Nor is Section 1986 ambiguous. It says "every person." The Constitution's guarantee of due process imposes upon the Court the obligation to interpret Section 1986's meaning honestly and fairly. Where the section says "every person" it means every person, including this Defendant. The word



"except" does not appear in the law -- and it cannot be read into it by this Defendant. When he reads "every person" as "every person except prosecutors," he mocks at the Constitution. He was a prosecutor, not a lawmaker. If he wishes to re-write the laws, let him run for Congress.

When Section 1986 mentioned "every person who, having knowledge that any of the wrongs...mentioned in Section 1985...are about to be committed, and having power to prevent or aid in preventing the commission of the same, etc. etc.," to whom would the Defendant have the Court understand the section is referring? Questions of civil rights are Federal matters, and offenses against the Constitution and its guarantees are matters for Federal officials. The Defendant was the chief Federal law enforcement official in the State of Connecticut. Is it his contention that he was not a "person" within the meaning of Section 1986?

Where else but in the office of the Federal prosecutor would a complaint regarding a conspiracy to deprive a citizen of due process -- of a "fair trial," of "equal protection under the laws," and of "equal privileges and immunities" -- be filed? Indeed, Section 1986 might well have been designated as "the Federal Prosecutors' Law" because its applicability is limited to persons holding that office. If a law is drafted to apply only to a specific class of persons, can a member of that class ever, under any conceivable circumstances, assert a claim to exemption from its application and "immunity" from liability for its violation? If a Federal prosecutor is the only person in a position to prevent or aid in preventing the commission of the type of violation contemplated by Section 1986, how can the Defendant claim that he is exempt from its terms? Where Section 1986 says "every person," it means "every Federal prosecutor."

Having eagerly accepted the prestige, the emoluments and the perquisites of the office of United States Attorney, the Defendant cannot now be permitted to evade or shirk the duties and responsibilities that go with the office -- including those imposed upon him by Section 1986. The Congress, in granting him the powers of his office, passed Section 1986 to insure that he employed them when and as they should be used.

(B) Even if it were not outlawed by the Civil Rights laws, prosecutorial immunity would not be applicable to the ministerial/administrative acts which are the basis for this suit.

A prosecutor has two quite separate duties only one of which involves the prosecutorial role. He is also a person possessed of the authority to intervene to prevent or aid in preventing the carrying out of a conspiracy to deprive another of his civil rights. This imposes upon him an obligation to give his attention to complaints of such deprivation, to investigate such complaints, and to intervene to advise the conspirators that they are pursuing a course of conduct which, if persisted in, may lead to a violation of the



law. Such intervention is ministerial, not prosecutorial.

Even those who claim that prosecutors do enjoy some form or measure of immunity acknowledge that the actions here complained against lie outside that area of immunity:

"Actions of a prosecutor taken within the scope of his proper prosecutorial capacity, as opposed to his investigatory capacity, are cloaked with the same immunity granted to judges." (Fed. Rules of Civil Procedure)

It is the Defendant prosecutor's execution of his investigatory duties which has occasioned this suit.

In Gregory v. Thompson, 500 F. 2nd 59 (1974) it was held that a judge enjoyed no immunity from suits for acts performed administratively. The court thus distinguished between the differing aspects of the judicial process. In the same way, this Defendant performed both prosecutorial and ministerial/administrative functions, and it is in connection with the latter that this action was filed.

In McGray v. State of Maryland, 456 F.2nd 1 (1972) it was held that "Where an official is not called upon to exercise judicial or quasi-judicial discretion, courts refuse to extend the protection of absolute immunity regardless of any apparent relationship of his role to the judicial system."

\* \* \*

2. IF THERE IS SUCH A THING AS JUDICIAL IMMUNITY, DID IT APPLY TO THE ACTIONS OF THE DEFENDANT CARRIED OUT IN DELIBERATE VIOLATION OF FEDERAL LAW?

The presence of malice and the intention to deprive, the Pierson court noted, is

"wholly incompatible with the judicial function. When a judge acts knowingly and intentionally to deprive a person of his constitutional rights, he exercises no discretion or individual judgment; he acts no longer as a judge, but as a 'minister' of his own prejudices, and accordingly, is liable for damages for the consequences of his acts (emphasis added)."

There can be no question but that this Defendant, acting knowingly and intentionally to deprive the Plaintiff of his constitution rights, was acting as "a minister of his own prejudices," and accordingly, is liable for damages for the consequences of his acts.

A comprehensive article, "Immunity of State Judges Under the Federal Civil Rights Act: Pierson v. Ray Reconsidered," in the Northwestern University Law Review, 65:615 1970, offered critical insights on the subject of immunity:

"The possibility of a judge's being held liable in damages for a good faith mistake or even for a negligent mistake is the bete noir of proponents of judicial immunity. But as a recent commentary suggests, the appropriate standard of Section 1983 judicial immunity is one of 'actual malice,' a term which is de-



defined to include reckless disregard. A review of the 1866 debate amply supports the proposition that Section 1983's authors intended it to provide for this kind of partial immunity. . . . The Act's Senate sponsor and other supporters said state judges would be liable only if they acted knowingly, viciously or oppressively in disregard of a law of the United States (emphasis added).

"With this limitation in mind, a workable standard can be suggested. A judge should be liable within Section 1983 if (1) he has knowingly erred as to law or fact or both, or erred with reckless disregard of making the proper decision, and (2) this was done for the purpose of harming the victim or discriminating against the victim of his class or depriving him of constitutional rights. Such a standard would exclude even an intentional misconstruction of law or misfinding of fact when not committed for a discriminatory purpose or to infringe constitutional rights (emphasis added).

"Proof that an error was intentionally made should necessarily raise a presumption that it was actuated by personal malice or class discrimination. While it is possible for a judge knowingly to err for some malicious reason, as in the case of a bribe, a plaintiff under a preponderance of evidence standard should not be required to negative every conceivable but unlikely reason. Once proof of intentional error is made, the burden should shift to the defendant to go forward with evidence that he was actuated by something other than malice or prejudice. A similar, though less compelling, relationship exists between proof of discriminatory intent and an inference of reckless or intentional error. Proof that a judge was prejudiced against a particular defendant or civil litigant might support an inference that a gross error was knowing or reckless rather than merely incompetent (emphasis added).

"The federal courts have repeatedly held that criminal statutes enacted for the protection of a particular class from particular harm endow the intended beneficiaries thereof with a civil cause of action against their violation. "

The standards cited above as being applicable to judges are equally appropriate in the case of prosecutors.

In Williams v. Hilliard ( \_F2nd\_CA6, May 28, 1975) a plaintiff successfully sued a prosecutor for damages on the grounds that he had wrongfully exercised his "discretion" by choosing not to disclose the existence of an FBI report refuting evidence he subsequently introduced and which led to a conviction, later reversed. In the same action, damages were awarded against another official, a state investigator who had acted on the prosecutor's instructions. And in Imbler v. Pachtman (47 L Ed 2nd 128), the Court asserted: "We would not grant [a prosecutor] absolute immunity from suits for violating pre-existing constitutional disclosure requirements if he committed these violations in bad faith. " In the matter here at issue, it will be for the jury to decide whether the Defendant exhibited bad faith or simply gross incompetence.



In Apton v. Wilson 506 F.2nd 83, it was held that the Attorney General and other high officials of the Justice Department did not enjoy absolute immunity from civil liability for directing law enforcement activity which deprived citizens of civil rights.

In Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics, the U.S. Supreme Court held that a violation of the Fourth Amendment's command against unreasonable searches and seizures by a Federal agent acting under color of Federal authority, gave rise to a Federal cause of action for damages consequent upon the agent's unconstitutional conduct. ( U.S. , 29 L Ed 2nd 619, 91 S Ct ) No agent of the State or Federal government is specially privileged in carrying out his duties, said the Court. On the contrary, all are enjoined by the Civil Rights statutes to act constitutionally and they act otherwise at their peril.

In Littleton v. Berbling, 468 2d 389 (1972) the Court held that any claimed quasi-judicial immunity of a state's attorney in suits for damages under the Civil Rights Act did not carry over into situations in which he was acting as a police investigator rather than in his quasi-judicial role. The Defendant here was called upon to act first of all in his investigative role to determine if the facts set forth in the complaint which had been filed with him were true. He failed to make any such investigation, nor did he seek out the conspirators and counsel them to desist from their wrongful course. He has claimed that the acts here complained against were carried out by him in the course of the performance of his duties. But he did nothing. No civil servant is called upon to do nothing. It cannot, therefore, be said that in doing nothing, the Defendant was engaged in the performance of his duty. In this case, it is ludicrous that one who, having been expressly commanded to perform an act and having failed to perform that act, should now be claiming that his act of omission was incidental to the performance of his duty, and that thereby he has become entitled to a certain immunity.

When the Defendant became aware of the conspiracy and failed to act to prevent it in accordance with the duty specifically imposed upon him by the law, he became a party to that conspiracy, and thereby he himself became a violator of Sections 1983 and 1985, in addition to his violation of Section 1986.

The case of Richard Nixon confirmed that no man is above the law, and no citizen in this land can claim immunity from punishment when he has violated the law as has this Defendant. It cannot be said in mitigation of the Defendant's wrongdoing that he violated the law through ignorance or inadvertance. He was selected for his office presumably because of demonstrated legal skill. When the complaint was filed with him, the fact of the law's applicability to him was specifically cited, and he had weeks to ponder the matter and to consider what course he should properly take. When he finally communicated to the Plaintiff the decision he had reached not to act, he did so with the explanation that he was a fellow-member of the offending justices in the Connecticut Bar Associa-



tion and in the circumstances could not process a complaint against them.

Imbler v. Pachtman (U.S. 47 L Ed 2d 128 96 Sup Ct) cited by the Defendant in his motion for dismissal, is not germane since it relates to an action filed under Section 1983 which provides redress against persons who deprive others of their civil rights. The Imbler court did not say: "A prosecutor enjoys absolute immunity from suits for damages." It said: "A prosecutor enjoys absolute immunity from Section 1983 suits for damages." The action here being tried has been brought under an entirely separate and quite different law, Section 1986, which does not apply to persons who deprive others of their civil rights, but provides redress against Federal officials who, having been given the power to intervene -- and the duty and obligation to intervene to prevent or to aid in preventing such acts by others -- "refuse or neglect" to do so.

The Defendant has made the completely unwarranted claim that the language in Imbler is "equally pertinent to 1986 since Imbler involved a state prosecutor." This is like equating two dissimilar cases on the premise that both involve shoemakers. The Defendant has drawn a legal red herring across the path, seeking to mislead the Court into believing that cases involving two quite separate laws are somehow related. They are not. The only statement which this Court may find of interest in Imbler is the Supreme Court's observation that there are two concepts of immunity, namely "absolute immunity" and "qualified immunity" for prosecutors who are themselves charged under Section 1983 with having deprived someone of his civil rights. Said the Court: "The fate of an official with qualified immunity depends upon the circumstances and motivations as established by the evidence at a trial." The "circumstances and motivations" which led this Defendant to refuse or neglect to carry out his duties and responsibilities remain to be explored at the trial of this action.

Since the Defendant has cited Imbler, the Plaintiff respectfully draws the Court's attention to another reference by the Imbler court to the fact that

"Judges cloaked with absolute civil immunity for centuries, could be punished criminally for willful deprivations of constitutional rights on the strength of 18 U.S.C. Section 1942, the criminal analog of Section 1983. The prosecutor would fare no better for his willful acts."

Alas, the court neglected to suggest what machinery for such criminal prosecution was to be employed when a Federal prosecutor, in the exercise of his "discretion" refuses or neglects to carry out his duty to initiate such prosecution in the case of persons with whom he is associated. Nor did it attempt to rationalize a concept of law which evidenced a readiness to see a judge or prosecutor jailed for denying someone's civil rights while at the same time denying the victim of the violation redress in the form of money damages. This would seem to mean that it would be quite all right for the government to collect a fine imposed as part of a penalty in a criminal action while at the same time denying the



victim of the crime similar redress. Only muddled thinking could accept such a foolishly illogical conclusion.

In *Littleton v. Berbling*, 468 F 2nd 389 (1971), the court held that:

"One of the few cases to hold a judicial officer liable for damages was *Picking v. Penn Rwy Co.*, 151 F 2nd at 250 (3rd Circ.1945).... Plaintiffs alleged that when they were illegally arrested, they sought to obtain their release at a hearing before Keiffer (a justice of the peace) but that Keiffer refused to hold any hearing as he was required to do by law.... The refusal of Keiffer to act as required by law may have deprived the plaintiffs of their liberty without due process of law.... If the plaintiffs brought a proper proceeding to secure their liberty before... Keiffer and he refused to hear their cause, he may be answerable to the plaintiffs in damages."

This Plaintiff brought a "proper proceeding" -- that is, a formal complaint -- before the Defendant and he declined to recognize it.

In 1974, the U.S. Supreme Court declared that:

"We have never held that the performance of the duties of judicial, legislative or executive officers requires or contemplates the immunization of otherwise criminal deprivations of constitutional rights." *O'Shea v. Littleton*, 414 U.S. at 503.

And in 1975, the same court held that:

"Public officials are not immune from liability for damages under the Civil Rights Laws if they knew, or reasonably should have known, that the action they took within their sphere of official responsibility would violate the constitutional rights of the (individual) affected or if they took the action with the malicious intention to cause a deprivation of such rights." *Wood v. Strickland*, U.S. 95 at 992.

It is beyond question that the Defendant knew that his failure to take the action required of him by law must inevitably result in the deprivation of the Plaintiff's constitutional right to a fair trial. According to the findings of the Supreme Court in *Wood*, he is therefore not immune from liability.

No matter how much he wriggles and squirms and burdens the Court with inapplicable citations, he is liable for damages under Section 1986 if the Plaintiff proves that he had knowledge of the imminent deprivation of the Plaintiff's rights and he failed to prevent or to aid in preventing such deprivation. The sole question before the Court is: Did the Defendant have knowledge of the imminent deprivation, and if he did have knowledge of it, did he do everything in his power to prevent it? If he did not, he did not act in good faith. If his decision to take no action was made in bad faith, he cannot now claim immunity from an action for redress under 1986.

Having explained in his motion for dismissal the need for "vigorous and fearless performance of the prosecutor's duty" to account for his claimed "immunity" from liability



for his decision not to act to aid in aborting the conspiracy, the Defendant then made the contradictory statement that he did not actually decline to act but "simply referred it to the Department of Justice." Does this mean that even without any investigation he saw enough merit in the Plaintiff's complaint to warrant referring it elsewhere where it might benefit from a more "vigorous and fearless performance of the prosecutor's duty?" If there was enough substance to the complaint to warrant referring it to Washington, was there not enough to warrant his taking steps to at least postpone consummation of the conspiracy until that "vigorous and fearless performance of the prosecutor's duty" of which he now speaks could be effected? Can this course of action be equated with compliance with Section 1986? If it represents non-compliance with 1986, it constitutes a violation of the law. If the Defendant violated the law, can it be said of his decision that it was made in "good faith"?

If the laws of the United States impose duties and obligations upon the Federal government's chief legal officer in Connecticut, they also confer upon him the authority to perform those duties and the means to carry out the obligations. It was not the responsibility of the complainant to instruct the U.S. Attorney and his staff in the correct course of action to be taken. Rather, it was for the U.S. Attorney to know which course was most appropriate to deal with the alleged violation, and to act upon that knowledge. He was provided with a staff of more than 25 persons, including twelve other attorneys who presumably were familiar with the wide range of legal actions which may be taken to deal with violations of the U.S. Code such as the one involved here. Aside from the investigative facilities of his own office, the Defendant had routinely available to him the facilities of the Federal Bureau of Investigation and other Federal investigative agencies. Aside from this, he could have communicated directly with the persons accused of the conspiracy to determine whether the facts recited to him by the Plaintiff were true, and to ascertain what explanation the conspirators might be prepared to offer for their actions. Furthermore, as an active, dues-paying member of the Connecticut Bar Association, the Defendant might well have exercised a strong influence with his five fellow-members accused of the conspiracy, and with the Association itself. By reason of his position as United States Attorney, the Defendant was particularly aware of the conspiratorial significance of the invidious "special resolution" passed by the Association's Board of Governors on January 20, 1975 which purported to grant to any judge or justice involved in hearings on Dacey v. Connecticut Bar Association a remission of his Association dues equal to the amount of any damages which such judge or justice might be called upon to pay as a consequence of a final decision in the case proving adverse to the Association. As a member of the Association he had the right -- indeed, the duty -- to bring the imminent infringement of the Plaintiff's rights to the attention of the Association which would have respected his



opinion as a Federal official charged with protecting the civil rights of citizens. He was surely aware of Section 51-39 of the General Statutes of Connecticut which debarred the justices from sitting on a case in which they had a pecuniary interest, and he knew that the shabby "special resolution" intended to thwart the intent of the statute reflected no credit upon the Association, upon the five justices whom it was designed to benefit, or upon himself as a member of the Association aware of the scheme.

Obviously, then, the Defendant did have the power to prevent the deprivation of the Plaintiff's civil rights, and he could have taken steps to aid in preventing the conspiracy.

Did the Defendant use the facilities of his own office or those of any other investigative agencies of the Federal government to investigate the charges filed by the Plaintiff and determine their validity?

He did not.

Did the Defendant communicate with those who were reported to him to be engaged in a conspiracy to violate the laws of the United States, or in any manner seek to caution such conspirators that they were in danger of violating the laws?

He did not.

Did the Defendant, aware of the dangerous course upon which the Bar Association of which he was a member had embarked, communicate with its responsible officers and counsel them to desist lest they bring discredit upon him, upon themselves, and upon the rest of the membership? Did he make any effort to explore with the Association the position it had taken with respect to its "special resolution" or otherwise seek to "aid in preventing the commission" of the conspiracy which was designed to deprive the Plaintiff of his civil rights?

He did not.

What did the Defendant do to prevent or to aid in preventing a deprivation of the Plaintiff's civil rights? He asserts that:

"It must be remembered that the Defendant has not actually declined to act but simply referred the Plaintiff's complaint to the Department of Justice where a decision could be made with respect to the Plaintiff's complaint and its merit unrelated to the Connecticut Bar Association affiliation."

Does the Defendant wish this Court to understand that he forwarded the Plaintiff's complaint to Washington because he lacked the authority to deal with it himself? The Defendant was not a court clerk with whom complaints were filed to be routinely passed to "headquarters" in Washington. Actually, it was the routine procedure in the Defendant's office for him to make decisions and merely apprise Washington of the action he had taken.

Is he saying to the Court that the complaint was serious enough to forward to Washington but not serious enough to investigate?



Or is he saying that his identification with and loyalty to the Connecticut Bar Association was such as to interfere with his carrying out his duties and responsibilities impartially?

In this case, he was advised that a violation of the law was imminent. If he was to "prevent or aid in preventing" that violation, he knew that he had to act promptly. He did not advise Washington that he was taking certain steps to investigate the complaint and deal with the imminent violation in a timely fashion. He did not report to Washington the results of a careful investigation, for he made no such investigation. Indeed, it was only when the Plaintiff made repeated written and personal approaches to him that he deigned to take any action at all on the complaint. He let more than a month pass without taking any action whatever -- and then he put a letter into Washington's bureaucratic hopper.

There was no investigation, then, nor any examination of the facts set forth in the Plaintiff's formal complaint filed with him. There was no contact between him and the persons charged with the conspiracy to violate Federal law. There was no suggestion to the Clerk of the Supreme Court of Connecticut that it might be prudent to hold up announcing any decision pending an examination of the civil rights aspect of the justices' handling of the case. In a word, the Defendant did nothing to perform the duties and carry out the obligations imposed upon him by his oath of office and the law of the land. He violated both his oath of office and the law of the land. Now, fearful that he is going to be called to account for having put his loyalty to his compatriots in the Bar Association ahead of his duty to safeguard the civil rights of the Plaintiff, the Defendant pleads that he is "immune". But the immunity cloak is non-existent and, like the Emperor in the fable, the Defendant has no clothes.

He has sought in his Motion for Dismissal to foster the illusion that this case involves the discretion of the United States Attorney to prosecute or not to prosecute. He is correct in asserting that the law did not require him to prosecute if, exercising his discretion, he considered prosecution unwarranted -- unless it can be shown that he acted in bad faith. But the law (Section 1986) is crystal-clear in requiring him to "prevent or aid in preventing" the violation of civil rights. He is given no discretion in that task. And it is precisely that which he refused to do. He has not, of course, dared to suggest to the Court that he did not recognize that five justices sitting in judgment on an action in which they were among the defendants outraged the civil rights guarantees of the Constitution and made a mockery of the Canons of Judicial Ethics. Nor can the Defendant claim that he was unaware of the applicability of Section 1986 to the complaint submitted to him by the Plaintiff, for the Plaintiff specifically cited Section 1986 in the complaint.

The essence of the argument, then, is: the Defendant knew what he was doing and his defiance of the law was deliberate. His decision was thus clearly made in bad



faith -- and courts have held that there can never be recognition of prosecutorial immunity in the face of a showing of bad-faith.

3. DID THE DISTRICT COURT ERR IN IGNORING THE FACT THAT COURTS HAVE HELD UNANIMOUSLY THAT THERE IS NO SUCH THING AS IMMUNITY FROM A CLAIM FOR INJUNCTIVE RELIEF?

Clearly, the District Court should have restrained the Defendant from continuing his failure to perform the duty imposed upon him by law to initiate action from criminal sanctions against those persons whom the Plaintiff charged were engaged in an active conspiracy to deprive him of his constitutional rights. The Court should have rebuked the Defendant for his failure to conduct a proper investigation of the charges filed with him on the grounds that he was, with the offending justices, a member of the Connecticut Bar Association. By such failure to investigate and to initiate such action, the Defendant participated in a cover-up of the judicial wrong-doing by the bench of the Connecticut Supreme Court. The Federal Rules of Civil Procedure (Rule 12 (b) 128 U.S.C.A.) provide that "On a motion to dismiss...all material allegations of the complaint are to be accepted as true and liberally construed in favor of the plaintiff." The original complaint in this action spelled out the wrongdoing by the justices, as well as the nature of the Defendant's cover-up of such charges. The District Court was therefore aware of that wrongdoing on the part of the Defendant. Its action in sweeping the Defendant's wrongdoing under the carpet made it a party to the cover-up, such action being a betrayal of the trial judge's own oath of office.

It is well settled in law that there is no immunity from an action for injunctive relief or a declaratory judgment. The trial judge cannot claim to be unaware of that fact. In Mills v. Larson 56 F.R.D. 63 (1972) it was held that the doctrine of official immunity from damage suits does not extend to suits seeking a declaratory judgment.

In State of Louisiana ex. Rel Purkey v. Ciolino, 393 F.Supp.102 (1975), it was held that claims by state officials of immunity from suits for damages under the Civil Rights Acts are inapplicable to suits requesting declaratory and injunctive relief.

In Saffioti v. Wilson, 392 F.Supp.1335 (1975) it was held that the doctrine of executive immunity has no application to a suit for declaratory judgment.

In Hogge v. Hedrick, 391 F.Supp.92 (1975) it was held that common law immunity of a public officer from suits for money damages for discretionary duties performed in good faith does not extend to declaratory or injunctive relief.

The District Court obviously erred in dismissing this action out of hand on the grounds of prosecutorial immunity, without providing the injunctive relief sought by the Plaintiff.

\* \* \*



This Court is invited to consider thoughtfully the fact that the Trial Judge in the District Court, the Defendant in this action, and the five offending justices were and are all personal friends and fellow members of the Connecticut Bar Association -- and thus co-defendants in the Plaintiff's successful libel action against that Association. When the Plaintiff cited to the Trial Judge the provisions of Section 51-39 of the Connecticut General Statutes, Canon 3 of the Canons of Judicial Ethics and the tradition of the law, all of which assert that a judge may not sit on a case in which his impartiality may be questioned or in which he has a pecuniary interest, the Trial Judge denied any partiality on his part and rejected the Plaintiff's suggestion that he recuse himself.

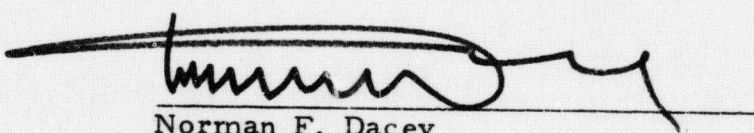
\* \* \*

IN SUMMARY:

The Defendant cannot now offer a valid defense of "prosecutorial immunity" because (a) the doctrine of "prosecutorial immunity" is outlawed by the Civil Rights Act, (b) the actions here complained of were a part of his ministerial or administrative duties, as distinguished from his prosecutorial duties, and precedent specifically denies immunity in connection with such functions, and (c) his failure to carry out his duties as laid down by the U.S. Code constituted a violation of law, and no man has immunity from being held to account for breaking the law.

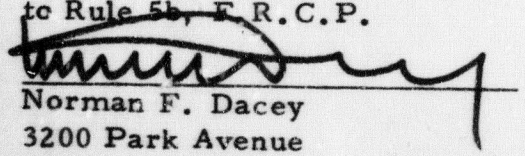
The Plaintiff respectfully requests that this Court return the action to the District Court with instructions that the requested jury trial proceed before an impartial judge whose conduct of it will not be impaired by co-membership with the Defendant in the Connecticut Bar Association.

It would also be appropriate for this Court to recommend that the Defendant's successor as United States Attorney for Connecticut be invited or instructed to (a) initiate appropriate action with respect to the complaint of civil rights violation which the Plaintiff filed originally with the Defendant, the Defendant's failure to act upon which became the occasion for this civil action at law, and (b) initiate criminal charges against the Defendant for his conspiratorial refusal to enforce the law in connection with such complaint.



Norman F. Dacey  
Plaintiff/Appellant  
3200 Park Avenue  
Bridgeport, Conn. 06604  
(203) 374-5226

Service certified pursuant  
to Rule 5b, F.R.C.P.



Norman F. Dacey  
3200 Park Avenue  
Bridgeport, Conn. 06604



MICROFILM:

FEB 18 1977

BRIDGEPORT

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED

FEB 16 4 32 PM '77

U.S. DISTRICT COURT  
BRIDGEPORT, CONN.

NORMAN F. DACEY

v.

PETER C. DORSEY

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CIVIL #B-76-190

JUDGMENT

This cause came on for consideration on a pro se complaint and the Court having filed its Ruling On Defendant's Motion To Dismiss under date of February 16, 1977, dismissing said complaint for failure to state a claim upon which relief can be granted,

It is accordingly ORDERED, ADJUDGED and DECREED that judgment be and is hereby entered in favor of the defendant and the pro se complaint is dismissed.

Dated at Bridgeport, Connecticut, this 18th day of February, 1977.

SYLVESTER A. MARKOWSKI, Clerk

By:

*Vincent R. DeRosa*

Vincent R. DeRosa

Deputy in Charge

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

FILED  
FEB 16 3 49 PM '77

U.S. DISTRICT COURT  
NEW HAVEN, CONN.

NORMAN F. DACEY,

Plaintiff,

v.

PETER C. DORSEY,

Defendant.

CIVIL NO. B-76-190

RULING ON DEFENDANT'S MOTION TO DISMISS

Defendant, United States Attorney for the District of Connecticut, moves to dismiss plaintiff's claim for failure to state a claim upon which relief can be granted, F. R. Civ. P. 12(b)(6).

I

On March 1, 1976, plaintiff filed a formal complaint with the United States Attorney for the District of Connecticut alleging that the five Justices comprising the Supreme Court of the State of Connecticut were about to deprive plaintiff of his constitutional right to a fair trial by failing to disqualify themselves from hearing an appeal from a judgment in plaintiff's favor against the Connecticut Bar Association, an organization of which all the Justices were members. Plaintiff filed a separate suit against the Supreme Court Justices, alleging violations of 42 U.S.C. § 1983 and 42 U.S.C. § 1985, which action this Court dismissed on the ground of judicial immunity. Dacey v. House et al, Civil Action No. B-76-146, February 16, 1977. Plaintiff, acting pro se, now alleges that defendant's failure to prosecute the Justices constitutes a violation of his civil



rights pursuant to 42 U.S.C. § 1986.

## II

The Court finds that the motion to dismiss must be granted. It is now well established that public prosecutors enjoy absolute immunity from civil suits for damages, under both the common law and 42 U.S.C. § 1983 when acting within the scope of their prosecutorial duties. Imbler v. Pachtman, 424 U.S. 409 (1976). See also Fine v. City of New York, 529 F.2d 70, 73 (1975); Dacey v. N.Y. County Lawyers' Assoc., 423 F.2d 188, 192 (2 Cir. 1969), cert. denied, 398 U.S. 929 (1970); Fanale v. Sheehy, 385 F. 2d 866 (2 Cir. 1969); Gregoire v. Biddle, 177 F.2d 579 (2 Cir. 1949), cert. denied, 339 U.S. 949 (1950); Yaselli v. Goff, 12 F.2d 396 (2 Cir. 1926), aff'd, 275 U.S. 503 (1927). In Imbler, the United States Supreme Court noted that,

The public trust of the prosecutor's office would suffer if he were constrained in making every decision by the consequences in terms of his own potential liability in a suit of damages. Id. at 424-5.

Although Imbler was concerned with the liability of state prosecutors under §1983, the same considerations of public policy apply to suits against federal prosecutors under § 1986. Furthermore, it is well settled that the decision whether or not to prosecute is within the discretion of the United States Attorney, and the Attorney General of the United States. See Peek v. Mitchell, 419 F.2d 575 (6 Cir. 1970); Powell v. Katzenbach, 359 F.2d 235 (D.C. Cir. 1965), cert. denied, 384 U.S. 906 (1966); United States v. Cox, 342 F.2d 167 (5 Cir.) cert. den. sub. nom. Cox v. Hauberg, 381 U.S. 935 (1965).

Accordingly, the motion to dismiss is granted.

Dated at New Haven, Connecticut, this 16<sup>th</sup> day  
of February, 1977.

Robert C. Zampano

United States District Judge



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

|                 |   |                        |
|-----------------|---|------------------------|
| NORMAN F. DACEY | : |                        |
|                 | : | CIVIL NO. B-76-190     |
| VS.             | : |                        |
|                 | : | U. S. COURT OF APPEALS |
| PETER C. DORSEY | : | DOCKET NO. 77-6100     |

INDEX TO THE RECORD ON APPEAL

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| Civil Cover Sheet                                                                                                                             | 2                   |
| Appearance of Norman F. Dacey, pro se Plaintiff                                                                                               | 3                   |
| Marshal's Returns, with Summons, attached                                                                                                     | 4                   |
| Appearance of Peter C. Dorsey, Esq. as counsel<br>for Deft. Dorsey                                                                            | 5                   |
| Answer                                                                                                                                        | 6                   |
| Defendant's Motion to Dismiss                                                                                                                 | 7                   |
| Defendant's Memorandum in Support of Motion to<br>Dismiss                                                                                     | 8                   |
| Plaintiff's Memorandum in Opposition to Defendant's<br>Motion to Dismiss                                                                      | 9                   |
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| Plaintiff's Motion for an Extension of Time to<br>File a Motion for Amendment or Alteration of the<br>Judgment, with ORDER, endorsed, thereon | 12                  |
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| Plaintiff's Notice of Appeal                                                                                                                  | 14                  |
| Clerk's Certificate                                                                                                                           | 15                  |

PLAINTIFFS

DACEY, NORMAN F.

DEFENDANTS

DORSEY, PETER C.

CAUSE

Action filed under Title 42, U.S.C., Section 1986, charging failure to take action to protect the civil rights of a citizen of the United States

ATTORNEYS

Norman F. Dacey (pro se)  
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~~264-4440~~ Bridgeport, Conn., 06604

Peter C. Dorsey  
 U. S. Attorney  
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 P.O. Box 1824  
 New Haven, Conn. 06508

☐ CHECK  
 HERE  
 IF CASE WAS  
 FILED IN  
 FORMA  
 PAUPERIS

FILING FEES PAID

| DATE                 | RECEIPT NUMBER           | C.D. NUMBER |
|----------------------|--------------------------|-------------|
| 7/7/76 \$15.00       | 7/9/76 Deposit GF100869  | \$15.00     |
| 6/7/77 \$5.00 Appeal | 6/10/77 Deposit GF100869 | \$5.00      |

STATISTICAL CARDS

| CARD | DATE MAILED |
|------|-------------|
| JS-5 |             |
| JS-6 |             |



| DATE<br>1976 | NR. | PROCEEDINGS                                                                                                                                                               |
|--------------|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7/7          | 1   | Complaint, filed.                                                                                                                                                         |
| 7/7          | 2   | Civil Cover Sheet, filed. Demand for Jury Trial./                                                                                                                         |
| 7/7          | 3   | Appearance of Norman F. Dacey, pro se, entered in his own behalf.                                                                                                         |
| 7/7          |     | Summons issued and, together with attested copies of same, copies of complaint, Form 285 (1), Check No. 1539 for \$6.00 Marshal's fees, forwarded to Marshal for service. |
| 7/13         | 4   | Marshal's return showing service, filed.--Summons/Complaint. (Dorsey, 7/8/76; Atty.Genl., 7/8/76, Cert.Mail #187296)                                                      |
| 7/29         |     | Certified Mail Receipt No. 187296, filed.                                                                                                                                 |
| 8/5          | 5   | Appearance of Peter C. Dorsey, U.S. Atty., entered for deft. Dorsey.                                                                                                      |
| 8/5          | 6   | Answer, filed by deft.                                                                                                                                                    |
| 8/5          | 7   | Deft's Motion to Dismiss, filed.                                                                                                                                          |
| 8/5          | 8   | Deft's Memo. in Support of Motion to Dismiss, filed.                                                                                                                      |
| 8/5          |     | Placed on Jury Trial List. Copies to counsel and RCZ.                                                                                                                     |
| 9/24<br>1977 | 9   | Plaintiff's Memo. in Opposition to Defendant's Motion to Dismiss, filed.                                                                                                  |
| 2/16         | 10  | RULING ON DEFENDANT'S MOTION TO DISMISS, filed and entered. MOTION GRANTED. ZAMPANO, J. M-2/17/77. Copies to counsel, TEC, MJB, RCZ, JON, JEL, AHL, FOE, U.Conn.LawRe     |
| 2/18         | 11  | Judgment, entered. Complaint dismissed in favor of deft. MARKOWSKI, C. M-2/18/77. Copies to counsel.                                                                      |
| 2/22         | 12  | Pltf's Motion for an Extension of Time to File a Motion for Amendment or Alteration of the Judgment, filed. (until March 24, 1977).                                       |
| 2/25         |     | Pltf.'s Mo. For Ext. (#12), endorsed: "Granted." ZAMPANO, J. M-2/28/77. Copies to counsel.                                                                                |
| 3/21         | 13  | Plaintiff's Motion for Alteration or Amendment of Judgment Pursuant to Rules 59-60 F.R.C.P., filed.                                                                       |
| 5/19         |     | Pltf's Motion for Alteration or Amendment, etc., (No. 13), endorsed: Denied. Zampano, J. M-5/20/77. Copies sent.                                                          |
| 6/3          | 14  | Plaintiff's Notice of Appeal from granting of Motion to Dismiss, filed. Copies to Mr. Dacey and U. S. Atty.                                                               |
| 6/3          |     | Civil Appeals Management Plan and Forms C and D handed to Mr. Dacey.                                                                                                      |
| 6/3          |     | Certified copies of Notice of Appeal and Docket Entries forwarded Pro se Clerk, U. S. Court of Appeals.                                                                   |
| 6/9          |     | Acknowledgment of receipt of Notice of Appeal, etc., received from Pro se Clerk, U. S. C. A.                                                                              |
| 6/29         |     | COPY OF CIVIL APPEALS SCHEDULING ORDER NO. 1, FILED. RECORD ON APPEAL DUE ON OR BEFORE JULY 13, 1977.                                                                     |



## CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF       |     | DEFENDANT                                                                                                                                                                                                                     | DOCKET NO. B-76-190  |
|-----------------|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| NORMAN F. DACEY |     | PETER C. DORSEY                                                                                                                                                                                                               | PAGE 2 OF ____ PAGES |
| DATE            | NR. | PROCEEDINGS                                                                                                                                                                                                                   |                      |
| 1977<br>7/13    |     | Record on Appeal forwarded Pro se Clerk, U. S. Court of Appeals by Certified Mail #598660 with return receipt, together with 2 extra copies of the Index. Copies of Index and Docket Entries sent Mr. Dacey and Atty. Dorsey. |                      |
| 7/19            |     | Cert. Mail receipt #598660, filed. (signature illegible)                                                                                                                                                                      |                      |
| 8/3             |     | Acknowledgment of receipt of Record on Appeal received from Pro se Clerk, U. S. Court of Appeals.                                                                                                                             |                      |



